

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID STEBBINS, d.b.a. ACERTHORN

PLAINTIFF

VS.

Case 3:21-cv-04184-JSW

KARL POLANO, d.b.a. SOFIANNP, ALPHABET INC.,
DISCORD INC., FACEBOOK INC.,
JOHN DOE #1, d.b.a. INITIATIVEKOOKIE, and
JOHN DOE #2, d.b.a. TGP482,

DEFENDANTS

**REPLY TO [040] RESPONSE IN OPPOSITION TO [012] MOTION FOR TEMPORARY
RESTRAINING ORDER**

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Reply to Discord Inc.'s Response to my Motion for Temporary Restraining Order in the above-styled action.

Defendant's Exhibit A is fake.

1. Discord claims that, on September 4, 2021, it sent an email to me stating, in pertinent part, the following:

“Guarding against future infringement is not something that the TRO Motion asks for. Nor is it tied to the concern that forms the basis of the Motion - that the defendants will alter or delete evidence that may exist. If anything, they are now on notice of the lawsuit so will just be more careful what they say or do. Even putting all that aside, as I noted below, Discord is not able to do what you are asking (but has already done what it can, which satisfies the concerns identified in the Motion). That being the case we would ask that you withdraw the Motion.”

2. They even provided an attachment that purports on its face to be a copy of said email.

3. However, this email was never sent to me. To prove this, please see **Exhibit A**, a screenshot of my email account where I perform a boolean search¹ for the first sentence in Exhibit A. As you can clearly see, the sentence “guarding against future infringement is not something that the TRO Motion asks for” does not appear in any email in the entirety of my email's history, let alone the past week. The Defendant is lying when it said that it sent this email to me.

¹ A boolean search is a function of most search engines where I place sentences or phrases in quotation marks. By putting them in quotation marks, the search engine will search only for that exact combination of words in that exact order, significantly reducing the number of false search results.

The motion is not moot.

4. Defendant Discord Inc says that the motion is moot because it has done the “functional equivalent” of what the motion asks for. Aside from their uncorroborated statements, they have offered precisely zero proof of this alleged functional equivalent. If they had actually taken this snapshot, I see no reason why they cannot simply produce this snapshot as an attachment to their response. The fact that they have not done so, and instead rely entirely on their uncorroborated statements, should be taken by the Court that they have nothing to show.

5. In the fake email that the Defendant attaches, they speculate (while offering precisely no proof) that the individual defendants will be more careful about what they say and do, now that they are notified of the litigation. This is demonstrably false. John Doe #1 (d.b.a. InitiativeKookie) has, in recent weeks, continued to send me harassing messages on both Discord and Reddit. See **Exhibit B**. Bear in mind that all of the screenshots provided in that exhibit are from the months of July, August, and September 2021, meaning they all necessarily came after the lawsuit was filed.

6. Even Karl Polano has gotten in on this continued harassment. For starters, see **Exhibit C**, a screenshot from my new Discord server proving that he has been banned from the Discord server. Now, the *reason* he was banned is irrelevant. Maybe the Court may disagree with me that he deserved to be banned. But consider this: How did he even manage to join the new server in the first place? He had to have joined, because I cannot ban someone from the server if they cannot join in the first place. So how did he join?

7. The answer is this: Someone by the pseudonym ChunkyLeeChong had pledged only \$1 per month to my Patreon account (see **Exhibit D**) in order to obtain the link to my Discord server. He then shared it with the other members of the Great Six Discord server so they can join the server as well without paying me any money. See **Exhibit E**. In other words, the Great Six Discord Server – which is lead by Karl Polano – is still thinking of new ways they can harass and dox me while giving me as little money as possible.

8. So no, the existence of this lawsuit is not deterring the individual defendants in any way, shape, or form.

**Banning the individual defendants' accounts is not the nuclear option
the Defendant makes it seem.**

9. In the Declaration of Elena Dimuzio, the Defendant alleges that it lacks the ability to suspend the privileges of individual accounts or servers to modify or delete messages. First of all, they offer no proof of this other than their uncorroborated word, whereas I have offered video demonstration that it can easily be done (see Doc. 12, Exhibit B). That alone means the Court should take their declarations of inability with a grain of salt.

10. But even barring that, they claim that the only way they could achieve this is by banning the accounts altogether. The implication is that this is a true nuclear option that should only be invoked if absolutely necessary. But it is not the nuclear option they claim it to be.

11. As you can see from Exhibits B-E, the individual defendants in this case have proven to be absolutely unscrupulous. They create new accounts just to harass and dox me. They evade bans and even evade paywalls. Even Karl Polano has, in the past, engaged in virulent, toxic behavior with me. See **Exhibit F** (cussing me out when I seek access to their server in order to find instances of copyright infringement).

12. In other words, the individual defendants in this case have done more than enough to earn themselves a permanent ban from Discord, not over copyright infringement, but because they have repeatedly and egregiously violated Discord's terms of service² and community guidelines³. And if Discord Inc, in the process of banning them for these repeated and egregious violations, end up complying with this TRO in the process, all the better.

13. Now, I understand that, if I were simply seeking an injunction ordering the termination of these accounts for that reason alone, that Discord Inc. would have Section 230 immunity from such an injunction. However, if Discord were serious about enforcing their terms of service and community guidelines, why wouldn't they *want* to terminate these accounts under these conditions? If the behavior demonstrated in Exhibits B-F do not justify a ban based on community guidelines violations, nothing does.

14. In fact, at least for John Doe #1, I have already submitted a request to Discord for them to investigate and terminate his accounts, and to ensure that no additional accounts can be created by him. See **Exhibit G**. Discord Inc. already has everything it needs to fully justify banning these accounts, and if they end up complying with this TRO in the process of doing so, all the better.

15. And again: All of this is assuming that Discord isn't simply lying when they claim that they lack the ability to suspend the ability to edit or delete messages without banning the users altogether. They have offered no proof of this aside from their uncorroborated word, whereas I have offered video proof that it can easily be done.

I have indeed requested that future infringements be preserved.

16. The Defendant alleges that preservation of “future infringements” is not something I have requested in the TRO motion. This is false. See Doc. 12, ¶ 5, where I request that the TRO “prevent the trio of individual Defendants from being able to simply destroy any evidence that might incriminate them” (emphasis added). There are no time limits mentioned. I very clearly asked for “any evidence that might incriminate” the individual defendants to be preserved. Does Discord Inc. not know what “any” means?

I have demonstrated a high likelihood of success on the merits.

17. Discord Inc. states that the screenshot I attached to my Motion for TRO “contains no such admission.” This is clearly false. Exhibit A to Doc. 12 clearly depicts Karl Polano – under his psuedonym SofiannP – stating “thats just the ones he reported because of @Lonely S K (I

2 <https://discord.com/terms>

3 <https://discord.com/guidelines>

Give Away GTA\$) ... theres so much other vids of him on here.” This is very clearly an admission that there are other infringements of my copyright on the server. How does that not demonstrate a high likelihood that I will find additional copyright infringements?

I indeed will suffer irreparable harm if the individual defendants are able to spoliage evidence.

18. Discord claims that “even if the individual defendants did attempt to delete their messages as Plaintiff fears, he would not suffer any irreparable evidentiary harm: Discord’s voluntary preservation of evidence would make the individual defendants’ attempted spoliation futile.” This is false. As I already explained, the individual defendants also need to be prevented from spoliating future evidence (and yes, that *was* included in the TRO Motion; see ¶ 16 of this Reply).

19. Defendant also alleges that “Plaintiff offers no evidence that the individual defendants would alter or delete evidence.” This is false. I have offered plenty of evidence that John Doe #1 is repeatedly deleting accounts and creating new ones in order to evade my bans and blocks.

Balance of Equities

20. Defendant alleges that the balance of equities tips in their favor because “the only private interest he has identified is preserving evidence that he hopes will help him win his case. But Discord has already vindicated that interest without the need for judicial intervention.” This is false. As I have already repeatedly demonstrated, their voluntary preservation (which, for the record, they have not even proven to exist; they only *claim* it exists) does not preserve future infringements.

Public interest

21. Defendant alleges that “given Plaintiff’s failure to establish a likelihood of success on the merits, a risk of irreparable harm, or a balance of equities in his favor, granting the TRO would undermine the public interest in upholding the law by weakening the standard for injunctive relief.” In other words, they claim that all the previous shortcomings in this TRO Motion mean that preliminary relief no longer serves the public interest.

22. I have already refuted all of counter-arguments.

(a) The motion is not moot. The Defendants have not proven that they have actually taken any snapshot, and even if they had proven that, it doesn't safeguard against future infringements (which *were* included in the original motion, because the motion asked for protection to prevent the spoliation of “any” evidence that might incriminate the individual defendants).

(b) There is no proof, aside from the uncorroborated word of one person, that they are incapable of granting the relief sought in the TRO Motion without banning the users altogether. But even if that were true, that shouldn't be a problem for Discord, since the

individual defendants have done more than enough to warrant such a ban, simply due to their repeated and egregious community guidelines violations.

(c) I have indeed shown a high likelihood of success on the merits, since I have provided a screenshot where SofiannP (aka Karl Polano) has admitted that there are “many more videos of” me on his server.

23. Therefore, this TRO is still in the public interest.

CONCLUSION

24. Wherefore, premises considered, I respectfully ask that this Court grant the relief requested in the Motion for Temporary Restraining Order.

So requested on this, the 8th day of September 2021.

/s/ David Stebbins
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